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NOVATEL WIRELESS, INC., VERIZON

11 COMMUNICATIONS, INC., AND

CELLCO PARTNERSHIP D/B/A

12 VERIZON WIRELESS

13 UNITED STATES DISTRICT COURT

14 SOUTHERN DISTRICT OF CALIFORNIA

15
16 CARUCEL INVESTMENTS, L.P., a

Delaware limited partnership,

17 Plaintiff,

18 v.

19 NOVATEL WIRELESS, INC., a

20 Delaware corporation, VERIZON

COMMUNICATIONS, INC., a Delaware

21 corporation, CELLCO PARTNERSHIP

22 D/B/A VERIZON WIRELESS, a

Delaware general partnership,

23
24 Defendants.

CASE NO. 3:16-cv-00118-H-KSC

**DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION IN
LIMINE #1**

Date: April 3, 2017

Time: 9:00 a.m.

Courtroom: 15A

Judge: Hon. Marilyn L. Huff

1 **I. DEFENDANTS SHOULD NOT BE BARRED FROM USING**
 2 **NEUTRAL AND FACTUAL DESCRIPTIONS OF PLAINTIFF**

3 Plaintiff seeks an order precluding “derogatory and/or misleading references
 4 to Carucel’s business,” such as “patent troll,” “patent assertion entity,” “a company
 5 that just sues people for money” or similar prejudicial characterizations. Defendants
 6 agree not to use derogatory terms (“patent troll” and “a company that just sues
 7 people for money”), but also respectfully request an order that recognizes and
 8 protects Defendants’ right to describe Plaintiff’s business in terms other courts have
 9 repeatedly found are neutral and factual, including “patent assertion entity.”

10 The *same* cases Plaintiff now cites in support of its motion have recognized
 11 that Defendants “may, however, describe the nature of [Plaintiff’s] business with
 12 neutral, strictly factual terms, such as ‘*patent assertion entity*,’ a ‘company that does
 13 not make anything, a company that does not sell anything,’ or ‘licensing entity.’”
 14 *Digital Reg of Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 4090550, at *12 (N.D. Cal.
 15 Aug. 19, 2014) (emphasis added) citing *HTC Corp. v. Tech. Props. Ltd.*, 2013 WL
 16 4782598, at *4 (N.D. Cal. Sept. 6, 2013) (allowing terms such as “non-practicing
 17 entity,” “*patent assertion entity*,” and related terms) (emphasis added). This is so
 18 because Plaintiff’s “status as a non-practicing entity is relevant to damages and the
 19 *Georgia–Pacific* factors.” *Id. Rembrandt Wireless Techs., LP v. Samsung Elecs.*
 20 *Co.*, 2015 WL 627430, at *1 (E.D. Tex. Jan. 31, 2015) (Defendants not precluded
 21 from arguing “Plaintiff is a *patent assertion entity* that does not manufacture or sell
 22 products in this field” or “characterizing Plaintiff as an entity that licenses and
 23 litigates, so long as those terms are used in conjunction with one another.”)
 24 (emphasis added); *Droplets, Inc. v. Overstock.com, Inc.*, 2014 WL 11515642, at *1
 25 (E.D. Tex. Dec. 10, 2014) (“This *limine* shall **not** prevent Defendants from referring
 26 to Plaintiff as a ‘*patent assertion entity*’ or ‘non-practicing entity’.”).

27 As is apparent from the decisions cited above, the majority of courts routinely
 28 allow Defendants to use the term “patent assertion entity” in circumstances such as

1 here, where there is no factual dispute over the fact that plaintiff is solely a patent
 2 assertion entity. The two cases Plaintiff cites where courts have excluded the term
 3 “patent assertion entity” are easily distinguished. In *Finjan, Inc. v. Blue Coat Sys.,*
 4 *Inc.*, 2015 WL 4129193, (N.D. Cal. July 8, 2015), the court barred the term “patent
 5 assertion entity” because, unlike here, it was disputed whether Finjan – a well-
 6 established company with a track record of actually making and selling products¹ –
 7 was “solely” a patent assertion entity. Likewise, the plaintiff in *Energy Heating,*
 8 *LLC v. Heat On-The-Fly, LLC*, 2015 WL 11143139 n.1 (D.N.D. Aug. 13, 2015), the
 9 only other case that Carucel cites for the proposition that the term “patent assertion
 10 entity” should be excluded, is (unlike Carucel) a company that does much more than
 11 assert its patents.² Carucel, on the other hand, has *no* history of making or bringing
 12 a product to market. Therefore, the term “patent assertion entity” here is an accurate
 13 description of Plaintiff’s business and should be allowed.

14 **II. CONCLUSION**

15 For these reasons, Defendants respectfully request that Plaintiff’s Motion *in*
 16 *Limine* #1 be granted only in as far as it does not prejudice Defendants’ ability to
 17 describe the plaintiff in neutral, strictly factual terms, such as “non-practicing
 18 entity,” “patent assertion entity,” a “company that does not make anything,” a
 19 “company that does not sell anything,” or “licensing entity.”

21 ¹ The plaintiff in *Finjan* previously “provided secure web solutions, including
 22 security software and hardware, to the enterprise and endpoint markets” and then
 23 migrated “from a pure software company into a diversified hardware and software
 24 platform technology provider” that “focused its efforts on further research &
 development and began sales and marketing activities.” See
<https://www.finjan.com/about/history>.

25 ² Heat On-the-Fly’s proprietary methods for heating water “is the culmination
 26 of nearly 20 years of field experience in water heating” and the company prides
 27 itself in “scientific inquiry and practical application.”
<http://www.heatonthefly.com/Background.html>.

1 Dated: March 20, 2017

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2
3 Bv: /s/ Amar L. Thakur

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on March 20, 2017 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civil Local Rule 5.4. Any other counsel of record will be served by electronic mail, facsimile and/or overnight delivery.

DATED: March 20, 2017

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